

THE HON'BLE SRI JUSTICE K.C.BHANU

WRIT PETITION No. 19697 of 2004

Date: 27.09.2005

Between:

Major A.Madan Mohan, s/o. A.Bhavani Shankar,
R/o. Flat No.303, B-block, Law Palmoon Apartments,
Road No.12, Bajnara Hills, Hyderabad

...Petitioner

and

The Prudential Bank, R.P. Road branch,
Secunderabad, rep. by its Asst. General
Manager, 8-1-381, R.P. Road, Secunderabad

...Respondent

ORDER:

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Challenging the order in I.A. No.412 of 2004 in O.P. No.1042 of 2000,
dated 15.07.2004 on the file of the A.P. Co-operative Tribunal,
Hyderabad, the present Writ Petition is filed.

It is the case of the petitioner that the respondent bank initiated proceedings against the petitioner under Section 37 of the A.P. Co-operative Societies Act in O.P. No. 1042 of 2000 on the file of the A.P. Co-operative Tribunal, Hyderabad, wherein an exparte preliminary decree was passed by the Tribunal on 17.06.2003; that he did not receive any notice or summons from the Tribunal; that he came to know of the decree when he received a notice of sale in E.P. No.391 of 2000 under Form No.IX under Rule 52 11(E) of the A.P. Co-operative Societies Act, 1964, dated 24.12.2003; therefore, he filed I.A. No.412 of 2004 to condone delay of 255 days in filing application to set aside the exparte decree, which was dismissed by the Tribunal on 17.06.2004; hence, the Writ Petition.

The learned counsel for the petitioner contended that the petitioner has not received summons from the Tribunal, so, he could not attend the Tribunal; but, exparte order was passed by the Tribunal on 17.06.2003; that the petitioner came to know of the decree when he received a notice of sale in E.P. No.391 of 2000 under Form No.IX under Rule 52 11(E) of the A.P. Co-operative Societies Act, 1964, dated 24.12.2003; hence, there was delay in filing the application to set aside the exparte order; therefore, he prayed to allow the Writ Petition.

On the other hand, the learned counsel appearing for the respondent contended that no sufficient reasons have been stated in the affidavit to condone the delay and hence, there are no grounds to interfere with the impugned proceedings.

The Tribunal dismissed the I.A. No.412 of 2004 on the ground that no sufficient reasons are mentioned to condone the delay. There is a delay of 254 days in filing the application under Order IX Rule 13 C.P.C. Copy of the affidavit filed in support of the application under Section 5 of the Limitation Act is made available for perusal of this Court. As seen from it, no sufficient cause has been shown for not approaching the Tribunal after passing of the decree. The words 'sufficient cause' in Section 5 of the Limitation Act has not been

explained, but, it must be a cause beyond control of the party that prevented the person from approaching the Court in time. The affidavit of the petitioner is vague and silent for what reasons he could not approach the Court by filing application under Order IX Rule 13 C.P.C. In the absence of any proper explanation, the Tribunal passed the impugned order exercising its discretion. The impugned order does not suffer from any infirmities so as to call for any interference from this Court.

The Writ Petition is devoid of merits and is, accordingly, dismissed.
No costs.

(K.C.Bhanu, J.)

27.09.2005

DRK